

REMARKS

I. Introduction

Receipt of an Office Action dated July 14, 2005 is acknowledged. In the action, claims 12-14, 33-35 and 51-53 were rejected for allegedly failing to comply with the written description requirement, and claims 1-11, 21-32, 40-50 and 58-60 were rejected as allegedly lacking enablement. Claims 1, 2, 7, 12-15, 17, 18, 20-23, 28, 33-36 and 38 were also rejected for obviousness-type double patenting over U.S. Application 09/851,422 and separately, over U.S. Application 11/131,443, and claims 1, 2, 4-10, 12-23, 25-31, 33-39 and 60 were rejected under obviousness-type double patenting over U.S. Application 09/851,422, in view of Glazier, U.S. Patent Application Publication 2003/0138432. Lastly, claims 54-57 were objected to for formality reasons.

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

II. Status of the Claims

In this response, applicants amended claims 1, 13, 14, 22, 34, 35, 40, and 52-54, and cancelled claims 12, 33 and 51. Exemplary support for the amended claims can be found throughout the specification and on page and in the originally filed claims. Applicants reserve the right to prosecute the subject matter of the cancelled claims in this or another application. Upon entry of this amendment, claims 1-11, 13-32, 34-50, and 52-60 will be under examination.

III. Rejection of the Claims Under 35 U.S.C. § 112

A. *Written Description Rejection*

Claims 12-14, 33-35 and 51-53 were rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to meet the written description requirement. In particular, the claims were rejected because the claims encompass a genus comprising analogs and derivatives and “the disclosure of each of the parent molecules does not sufficiently describe the claimed

genus, because the genus encompasses members which differ substantially in structure from the parent compounds.” Office Action at 3. Applicants respectfully traverse this ground for rejection.

The claims recite that the cytotoxic peptide is a pore-forming cytolytic peptide which, in itself, has a structural and functional connotation. Nevertheless, in the interest of expediting prosecution, applicants amended the claims to delete reference to analogs and derivatives of the cytolytic peptide. Applicants trust that these amendments address the Office’s concerns.

B. *Enablement Rejection*

Claims 1-11, 21-32, 40-50 and 58-60 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly not enabled. Specifically, the claims were rejected because while the specification “[is] enabling for how to make procytotoxins comprising cytolytic peptides having amphipathic alpha-helical structures and how to use said protoxins in the targeting of cancer cells, does not reasonably provide enablement for how to make procytotoxins which do not comprise amphipathic alpha-helical structures.” Office Action at 3.

In the interest of expediting prosecution, applicants amended the claims to recite that the cytotoxic peptide is a pore-forming cytolytic peptide. Applicants trust that this amendment addresses the Office’s concerns.

IV. Double Patenting Rejection

Claims 1, 2, 7, 12-15, 17, 18, 20-23, 28, 33-36 and 38 were provisionally rejected under obviousness-type double patenting as allegedly unpatentable over claims 1-26 in co-pending U.S. Application No. 09/851,422 and over claims 1-22 in co-pending U.S. Application No. 11/131,443. In addition, claims 1, 2, 4-10, 12-23, 25-31, 33-39 and 60 were provisionally rejected under obviousness-type double patenting as allegedly unpatentable over claims 1-26 in co-pending U.S. Application No. 09/851,422, in view of Glazier.

Applicants respectfully request that the obviousness-type double patenting rejections be held in abeyance until indication of allowable subject matter by the Office.

V. Claim Objections

Claim 54 (and therefore dependent claims 55-57) were objected to for being dependent on a rejected base claim but were considered allowable if rewritten in independent form. Without acquiescing to the Office's rejection of the base claims, applicants amended claim 54 to be in independent form. Applicants trust that this amendment addresses the Office's concerns.

CONCLUSION

Applicants respectfully request examination on the merits of this application. Should there be any questions concerning this application, Examiner Canella is invited to contact the undersigned at the number listed below.

Date 10/14/05

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5574
Facsimile: (202) 672-5399

Respectfully submitted,

By 

Kristel Schorr
Attorney for Applicant
Registration No. 55,600

Should additional fees be necessary in connection with the filing of this paper, or if a petition for extension of time is required for timely acceptance of same, the Commissioner is hereby authorized to charge Deposit Account No. 19-0741 for any such fees; and applicant(s) hereby petition for any needed extension of time.